82-809

No.

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ALEXANDER L. STEVAS,
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IN THE

Supreme Court of the United States

OCTOBER TERM, 19

LARRY TABELING,

Petitioner

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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QUESTIONS PRESENTED

WHETHER PETITIONER WAS UNLAWFULLY SEIZED DURING HIS ENCOUNTER WITH FEDERAL AGENTS AND LOCAL POLICE OFFICERS IN A DENVER AIRPORT DURING THE EVENING OF MARCH 21, 1978?

WHETHER PETITIONER'S DECLINATION TO ANSWER CERTAIN QUESTIONS FOLLOWING HIS SEIZURE AT THE DENVER AIRPORT (AND AFTER BEING GIVEN AND INVOKING HIS MIRANDA WARNINGS) WERE THE PROPER SUBJECT OF INTRODUCTION AT TRIAL; OR WAS THE ADMISSION OF SUCH EVIDENCE VIOLATIVE OF THE FIFTH AMENDMENT?

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vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

I.

LARRY TABELING, (hereafter petitioner), petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit affirming his controlled substance convictions in the instant case.

II.

OPINION BELOW

The opinion of the United States Court of Appeals for the Seventh Circuit in this case is not reported. It is reproduced as Group Appendix A to this petition.

III.

JURISDICTION

The judgment of the Court of Appeals for the Seventh Circuit was entered on July 27, 1982. A timely petition for rehearing was filed with suggestions that the case was appropriate for *in banc* hearing; this was denied on September 27, 1982. The order denying rehearing is set forth as Appendix B *infra.*[1] This Court's jurisdiction is invoked under 28 U. S. C. § 1254 (1). This petition for certiorari is filed within the period of time set forth under Supreme Court Rule 20.1.

IV.

CONSTITUTIONAL PROVISIONS, RULES AND STATUTES INVOLVED

Pursuant to Supreme Court Rule 21.1 (f) the following constitutional provisions, rules and statutes are set forth in the Appendix:

U. S. Constitution, Fourth Amendment
U. S. Constitution, Fifth Amendment
21 U. S. C. § 841 (a) (1)
21 U. S. C. § 846
18 U. S. C. § 2

The constitutional provision and statutory references are reproduced as Appendix D, *infra.*

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[1] On October 14, 1982, the Court of Appeals for the Seventh Circuit entered an order staying the mandate pending this petition for certiorari (Appendix C, *infra*).

V.

STATEMENT

(1). In December, 1980, the petitioner was charged (along with co-defendant Sam Jones) with violating the federal drug laws (21 U. S. C. § 846 . . App. D, *infra*). That indictment, in two counts, was returned in the Central District of Illinois, Danville Division. A superseding indictment was returned in January, 1981 charging the same offenses in the same counts but in a more detailed fashion. At all times herein pertinent, the petitioner was represented by private counsel and he was enlarged on bail. Petitioner had a jury trial commencing April 1, 1981 in the U. S. District Court, Danville, Illinois and on April 9, 1981, that jury returned guilty verdicts on both counts of the indictment. On June 22, 1981, a custodial sentence was imposed.[2]

(2). As may be pertinent to this petition it was claimed below and it is within the contours of this petition, again claimed, that the entire jury trial was flawed by virtue of pretrial rulings relating to the admissibility of certain evidence seized from the petitioner at an airport in Denver, Colorado on March 21, 1978.

After the instant indictment was returned a federal magistrate conducted a suppression hearing involving the March 21, 1978 arrest of the petitioner at the airport in Denver, Colorado. At that pretrial suppression hearing evidence was taken from a DEA Agent, Weaver. Agent Weaver testified that a Florida

[2] The petitioner received a five (5) year sentence and a $5,000 fine on count 1; a ten (10) year sentence and a $5,000 fine on count 2; the custodial sentences to run concurrent and the sentences were imposed pursuant to 18 U. S. C. § 4205 (b) (2). By order of the Court of Appeal for the Seventh Circuit, the petitioner remains enlarged on bail pending disposition of this petition.

Police Officer contacted the Denver, Colorado DEA offices and Weaver learned from a Miami Police Officer that the petitioner had boarded an aircraft from Miami to Denver and that the Florida Police Officer *suspected* that the petitioner was carrying a quantity of cocaine. The factors leading the Miami Police Officer to so conclude . . included the following:

(A). The petitioner bought a one-way ticket to Denver approximately ten (10) minutes prior to that flight departing;

(B). The petitioner walked down the concourse at the Florida airport in a suspicious manner (petitioner would walk, stop, reverse directions (??))[3] . . and then

(C). The petitioner had little if any luggage.

The Florida Police Officer also provided Agent Weaver with a complete description of the petitioner as well as the name of the airline and the flight number (R. 47, Tr. 17).

During the evening hours of March 21, 1978, Weaver watched the petitioner debark the flight and watched him walk toward the main terminal . . reverse directions . . and then the petitioner [would] stand "in such a manner [as] to observe persons going by him and in his immediate vicinity" (R. 47, Tr. 18). The petitioner then went to the public telephones . . and made two (2) telephone calls . . and then walked out of the airport. That is the saga up to the point where Agent Weaver then approached (arrested or seized??) the petitioner as the

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[3] The February 5, 1981 pretrial suppression hearing was conducted before a federal magistrate in Danville, Illinois. The transcript of that proceeding is included in the original record at R. 47. The conduct considered suspicious by the Florida Police Officer is reported at R. 47, Tr. 14-17. The Florida Police Officer was not called as a witness either during the suppression hearing or at trial.

Parenthetically we wonder as to the accuracy of the Miami Police Officer's observations when there were only 10 minutes from the purchase of the ticket (in petitioner's own name) to the boarding of the flight to Denver.

petitioner was standing outside of the airport in an area where the taxicabs would pick up passengers. Weaver requested that the petitioner go with him into the security office which was some 30 yards from the cabstand (Tr. 20). Once in the security office Petitioner was advised of his constitutional rights *per Miranda* (Tr. 20) and Weaver requested that the Petitioner provide identification. All Petitioner had were tickets and hotel receipts . . "this sort of thing" . . with his name on it (Tr. 20). Also in the room at this time, was at least one other DEA Agent and a local Denver police officer (Tr. 21). As regarding the suitcase . . Weaver asked him what was in it (a carry-on type handbag) and according to Weaver, the Petitioner said that Weaver was free to look inside it (Tr. 21). Inside the carry-on handbag was $38,000 in U. S. Currency (Tr. 22).

Weaver questioned the Petitioner as to the ownership of the money, the Petitioner declined to state who owned the money or how the Petitioner came into possession of the money (Tr. 22).[4] DEA Agent Weaver thereafter, contacted an IRS Agent who came and interviewed the Petitioner in the same security office (Tr. 23). Thereafter, Petitioner was given a receipt for the money (Tr. 22). In addition, the agents took an airline ticket and a hotel receipt . . the hotel receipt had the name JONES on it (Tr. 23). Thereafter, Weaver testified that the Petitioner was released and his property returned (other than the hotel receipt, an airline ticket, and the monies; (Tr. 23)).[5]

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[4] This conversation follows the giving of *Miranda* warnings by Weaver to the Petitioner (Tr. 20). All of this took place in the security office where there were at least three law enforcement agents and the petitioner (Tr. 20-21).

[5] Petitioner was not released. Petitioner was remanded to the local authorities, retained in custody and released the following day. (Tr. 658-663).

During the suppression hearing before the magistrate the agent was allowed to testify, over objection, to the following:

"Q. Were you aware, Agent Weaver, on the day of certain characteristics that were known to you in your professional capacity and particularly as an agent who had worked six months or more at an international airport—

A. Yes, Ma'am.

Q. —of certain characteristics attributable to drug dealers?

A. Yes, Ma'am.

MR. VOLPE: Objection to that.

THE COURT: Overruled.

Q. Would you start what characteristics were, what the behaviors were, that you looked for in surveilling people in the Denver airport with an eye toward narcotics trafficking.

A. We looked particularly for people who purchased one-way, cash-purchase tickets to known distribution areas.

MR. CUTRONE: I'm sorry. I didn't hear that.

THE COURT: To known distributions areas.

A. Also, persons who were returning under the same circumstances from known distribution areas. People with no checked luggage. Most usually traveling by themselves. People who boarded flights at the last possible moment.

Q. As you observed Mr. Tabeling on the 21st of March, did you see, observe, characteristics that you recognized?

A. Yes, Ma'am.

Q. Would you just list those again. I believe you testified about them already.

A. Well, speaking specifically of his actions upon deplaning in Denver, the manner in which he proceeded down the concourse: stopping, reversing direction, varying the speed of his movement down the concourse, particular interest in people behind him and to each side of him.

MR. VOLPE: Objection to that.

THE COURT: It will be overruled."
(Pretrial Suppression Hearing, Tr. 28-29).

The magistrate recommended that the motion to suppress be denied and that order was affirmed by the trial judge (R. 24).

(3). During trial Agent Weaver reviewed the same evidence and identified government exhibit 1 as a hotel receipt with the name of Jones and Tabeling (Tr. 355). The Agent also told the trial jury . . "I asked Mr. Tabeling who Sam Jones was and he replied 'that's me sometimes' " (Tr. 355). Additionally, Agent Weaver told the trial jury . . as to the $38,000 . . "when I asked him if it did not belong to him, to whom did it belong, HE DECLINED TO IDENTIFY THE PARTY THAT OWNED THE CASH" (Tr. 358). The trial court overruled objections to the witnesses testimony that Petitioner declined to identify the owner of the money and a motion for a mistrial was denied (Tr. 358-361).

The government, during closing argument, reminded the jury that it was rather unlikely that the Petitioner would be carrying $38,000 . . when it could have been in a bank earning interest and not recently retrieved from a safe deposit box. In addition, the government urged the jury to consider why it was that the Petitioner didn't tell the agents, *post Miranda warnings*

. . the same thing that the Petitioner testified to during the jury trial (Tr. 827-829).[6]

(4). After the jury verdict of guilty, the Petitioner prosecuted a timely appeal. As regarding the question presented herein . . the Appellate Court, while affirming the conviction and sentence, stated:

> "1. Tabeling clams that he was unlawfully searched and seized at the Denver airport. This contention is refuted by this court's opinion in *United States v. Black*, No. 81-1883 (7th Cir., April 6, 1982), ____F. 2d____."
> (see Appendix A, *infra*).

The decision referred to by the Court of Appeals while affirming Petitioner's conviction is *U. S.* v. *Black*, 675 F. 2d 129 (CA 7, 1982) (Swygert, Sr. Cir. J., dissenting) (cert. pending, *Black* v. *U. S.*, No. 81-2239).

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[6] The Petitioner testified on his own behalf before the trial jury (Tr. 640-738). As regarding the $38,000, the petitioner testified that this was used for the purchase of plants (Tr. 655-657). The trial evidence showed that the Petitioner was in the business of buying and selling plants and that he would purchase plants in Florida, for cash, and have the plants shipped into Illinois so that they might be sold (Tr. 648-663).

The trial court's ruling adopting the magistrate's recommendation declining to suppress the physical evidence and statements allowed the government to fully cross examine on the $38,000 (Tr. 717-720).

Of course, the same ruling allowed the government to fully argue to the jury the entire Denver airport saga as probative evidence of guilt. The only physical evidence offered by the government at this jury trial were the items seized from the petitioner on March 21, 1978 at the Denver airport.

VI.

ARGUMENT

REASONS FOR GRANTING THE PETITION

(1). This case presents an important and recurring question concerning the scope of the Fourth Amendment as it pertains to persons within a large public airport. The Court of Appeals held, without explanation, that the Petitioner's contention is [was] refuted by another Seventh Circuit decision, *U. S.* v. *Black*, 675 F. 2d 129 (CA 7, 1982), cert. pending, *Black* v. *U. S.*, 81-2239 (1982).

(2). The decision below fails to take into consideration the differences not only as between *Black* and the instant case, but, further, the decision below fails to take into account any number of decided circuit decisions . . all to the contrary.[7]

(3). In *U. S.* v. *Black, ante,* the facts which allowed for the permissible warrantless airport arrest included:

(a). Black was the first passenger off the aircraft from Ft. Lauderdale; and

(b). Black exited the plane in a speedy fashion and was in a disoriented state; and

(c). He appeared to be nervous as he walked through the concourse and viewed the flight information screen.

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[7] *U. S.* v. *Jefferson*, 650 F. 2d 854 (CA 6, 1981) (reversing airport drug conviction finding a seizure of the person under circumstances similar to those at bar); *U. S.* v. *Patino*, 649 F. 2d 724 (CA 9, 1981) (reversing drug conviction in airport situation for similar reasons); *U. S.* v. *Place*, 660 F. 2d 44 (CA 2, 1981) (reversing similar conviction in airport situation finding an impermissible seizure of the defendant and thus voiding the conviction).

Following the Court's granting certiorari in *Place* (102 S. Ct. 2901 (1982)) the Court heard oral argument in *Florida* v. *Royer*, 102 S. Ct. 631 (1981). *Royer* involved facts similar to those proffered within this Petition.

In *Black* the Court reviewed the objective factors and thereafter announced:

> Despite the Supreme Court's recognition that "a trained officer draws inferences and makes deductions ... that might well elude an untrained person," *United States v. Cortez*, 449 U.S. 411, 418, 101 S.Ct. 690, 695, 66 L.Ed.2d 621 (1981); *see Mendenhall*, 446 U.S. at 563, 100 S.Ct. at 1882 (Powell, J., concurring) (quoting *Brown v. Texas*, 443 U.S. 47, 52 n.2, 99 S.Ct. 2637, 2641 n.2, 61 L.Ed.2d 357 (1979)), it is clear that under the *Reid* standard, these factors alone would not justify a *Terry* stop.
>
> (675 F. 2d at 137).

It is the Petitioner's position that he was impermissibly "seized" at the Denver airport on the evening of March 21, 1978.[8] Petitioner was removed from the cabstand outside of the Denver airport into a closed security office. In that closed security office were the Petitioner and at least three (3) law enforcement agents, presumably armed.[9] It is unlikely, at best, to assume that the Petitioner thought he was free to leave. Such a scenerio can hardly be within the realm of the citizen providing voluntary co-operation through non-coercive questioning. Indeed, one might simply imagine ... rather than experience, the interplay as between the agents and the Petitioner.

The Petitioner had already been selected for the encounter. That much was admitted by agent Weaver during the February 5, 1981 suppression hearing before the federal magistrate. The Petitioner was singled out for the seizure even prior to his

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[8] In *Mendenhall*, a majority of the Court found no occasion to decide whether a citizen-police contact constitutes a seizure within the meaning of the Fourth Amendment in the absence of police conduct that would cause a reasonable person to believe that he was not free to leave. See 446 U. S. at 560 (opinion of Powell, J.); *id.* at 568-571 (White, J., dissenting).

[9] Similar commentary came from members of this Court during the oral argument in *Florida* v. *Royer* on October 5, 1982.

arrival at the Denver airport. So much was likewise conceded by Agent Weaver during the suppression hearing (id. at Tr. 13-20). Is it reasonable to assume that the Petitioner *felt* he was free to leave a closed security office surrounded by armed agents when he had been taken into the security office from the public cabstand?? It must be remembered that this was not just a casual encounter with the police in the airport; the agents had definately identified the Petitioner as a suspect for investigation. The stopping of the Petitioner at the cabstand and removing him to the closed security office conveyed an air of authority indicating that the Petitioner was hardly free to leave.[10]

(4). In *Brown* v. *Texas*, 443 U. S. 47 (1979) Chief Justice Burger, wrote, the following, for an unanimous Court:

> "When the officers detained appellant for the purpose of requiring him to identify himself, they performed a seizure of his person subject to the requirements of the Fourth Amendment. In convicting appellant, the County Court necessarily found as a matter of fact that the officers "lawfully stopped" appellant. See Tex.Penal Code Ann., Tit. 8, § 38.02 (1974). The Fourth Amendment, of course, "applies to all seizures of the person, including seizures that involve only a brief detention short of traditional arrest. *Davis v. Mississippi*, 394 U. S. 721, 89 S.Ct. 1394, 22 L.Ed.2d 676 (1969); *Terry v. Ohio*, 392 U. S. 1, 16—19, 88 S.Ct. 1868, 1877, 20 L.Ed.2d 889 (1968). " '[W]henever a police officer accosts an individual and restrains his freedom to walk away, he has "seized" that person,' *id.*, at 16, 88 S.Ct., at 1877,"
>
> (99 S. Ct. at 2640).[11]

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[10] Cf., *U. S.* v. *Patino*, 649 F. 2d at 726-727 (CA 9, 1981).

[11] In *U. S.* v. *Elsoffer*, 671 F. 2d 1294 (CA 11, 1982) the Court, while affirming the drug conviction after an airport stop situation found ... that the retention of that defendant's airline ticket and identification constituted a "seizure" within the Fourth Amendment (671 F. 2d at 1297). Nevertheless, the Court affirmed the conviction because of the unusual size and shape of a *bulge* on Elsoffer's person (id. at 1298-1299).

In our case, the government does not even intimate the presence of any "bulge" on petitioner's person.

In *Reid* v. *Georgia*, 448 U. S. 438, 100 S. Ct. 2752, 65 L. Ed. 2d 890 (1980), seven justices found that a DEA agent lacked probable cause to stop two airline passengers so that the evidence obtained had to be suppressed.

In *Reid*, the Court held that DEA agents did not have a founded suspicion which would justify stopping the defendant when he arrived on a flight. In that case the agents contended that they had a well-founded suspicion because: (1) the defendant was traveling from Fort Lauderdale, a known source of cocaine; (2) the defendant arrived in the early morning when law enforcement activity was minimal; (3) the defendant appeared to be trying to conceal the fact that he was traveling with a companion; and (4) the defendant's only luggage was a shoulder bag. The Court concluded that "the agent could not, as a matter of law, have reasonably suspected the petitioner of criminal activity on the basis of these observed circumstances." 100 S. Ct. at 2754.

(5). It is our position that the Petitioner in this case was subject to an impermissible seizure. Here Agent Weaver did not merely stop the Petitioner to ask him a few questions. Upon intercepting the Petitioner in the public cabline outside the airline, the agent identified himself and requested [directed?] that the Petitioner accompany him to a security office ... away and apart from the cabstand. Under such circumstances, the Petitioner could not reasonably believe he was free to leave; this was a "seizure" within the Fourth Amendment.[12] The seizure lacked any probable cause whatsoever in that the only conduct ascribed to the Petitioner was that of any ordinary

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[12] Seizure *vel non* within the airport syndrome has yet to command a majority of the Court. In *U. S.* v. *Jefferson*, 650 F. 2d 854 (CA 6, 1981) the Court vacated the drug conviction finding under strikingly similar circumstances that an impermissible seizure of that defendant had occurred. The Court in *Jefferson* commented as regarding this Court's declination to reach a consensus as regarding when a seizure takes place within an airport ... 650 F. 2d at 856, n. 1.

traveler (using the public telephones, being alone, carrying a single shoulder bag, looking around as one walked through the concourses). No other realistic *indicia* of any criminal offense was present.[13]

(6). The government's conduct extended to the use of silence after the administration of *MIRANDA WARNINGS.*

Agent Weaver testified at the suppression hearing that when the Petitioner was first taken into the security office, he was given his "*rights per Miranda*" (Tr. 20). Thereafter, the Petitioner declined to answer questions as to the ownership of the currency and how it was that the Petitioner came into possession of the currency (Tr. 22). In the presence of the trial jury Agent Weaver repeated the declination of the defendant to discuss the money (Tr. 356-361). A timely trial objection was offered as was a motion for a mistrial and a request to strike Weaver's comments as regarding possession and ownership of the monies (Tr. 356-361). The Petitioner repeats that the physical exhibits offered by the government in this drug-conspiracy trial were the exhibits seized from the Petitioner at the Denver airport in March of 1978. No other or additional physical exhibits were offered.

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[13] The Petitioner, of course, *had no drugs either on his person or in his possession.* Accordingly, the agents seized U. S. Currency. We were unaware that the government could simply seize currency from a citizen-traveler at their "whim" or "fancy". But, that is exactly what the government agents did in this case.

> Putting the gloss of reality into the circumstances at bar, what we really have is the warrantless arrest of the petitioner, the seizure of his person into a "secured" security office (in the company of at least 3 armed law enforcement agents), the giving of "Miranda Warnings" and . . . the government's theory that all of this was voluntary. Under such circumstances to assume the voluntary nature of anything done by the Petitioner would be to blink at reality.

(7). It is the position of the Petitioner that after the giving of Miranda Warnings . . . the government could not thereafter utilize the actual invocation of those rights by the Petitioner. However, regrettably, that is exactly what the government did in this case. Indeed, the government argued to the trial jury during their closing argument the fact that the Petitioner didn't tell the agents about the ownership and possession of money when he was stopped at the Denver airport on March 21, 1978 (Tr. 827-829). No curative instruction was given the jury.

(8). In *U. S.* v. *Hale,* 422 U. S. 171, 95 S. Ct. 2133 (1975), the Court held that post arrest silence could not be used to impeach the defendant's testimony at trial. This rule seemed to come under the Court's supervisory powers. However, in *Doyle* v. *Ohio,* 426 U. S. 610, 96 S. Ct. 2240 (1976) the Court held that silence after the Miranda Warning may not be used at trial when the defendant testifies.

The Circuit Courts have consistently precluded the government from arguing guilt based upon the exercise of constitutional protections. For example, in *U. S.* v. *McDonald,* 620 F. 2d 559 (CA 5, 1980) and *U. S. ex rel. Macon* v. *Yeager,* 476 F. 2d 613 (CA 3, 1973) the Courts reversed convictions where the prosecution . . . urged as evidence of guilt . . . the desire of *McDonald* and *Macon* . . . to have counsel in post arrest situations. The government's comments in *McDonald* . . . were such that the HARMLESS ERROR TEST WAS . . . PER SE INAPPLICABLE (620 F. 2d at 564-565). In *Macon,* the Court similarly ruled that the defendant's exercise of the constitutional rights (Fifth and Sixth Amendments) . . . were well beyond the framework of the harmless error doctrine (476 F. 2d at 615-617).

In *U. S.* v. *Prescott,* 581 F. 2d 1343 (CA 9, 1978), the Court again reversed a federal conviction finding that the government may not be permitted to comment on the exercise of a defendant's Fourth and Fifth Amendment protections (581

F. 2d at 1350-1353). The Court . . . while reversing . . . saw fit to remind the government that . . .

> "Inadmissible evidence which can readily be misinterpreted by the jury, should not be admitted just to put the relevant facts in their true setting. For the reasons stated in *HALE, DOYLE,* AND *GRUENWALD SUPRA,* the facts in issue are so ambiguous as to be irrelevant. Moreover, they are so readily subject to misinterpretation by a jury as to render a curative or protective instruction of dubious value." (cit om.) 581 F. 2d at 1352).

In *U.S.* v. *Massey,* 687 F. 2d 1348 (CA 10, 1982) the Court reversed a similar drug conspiracy conviction where the Government in that case . . did exactly what the U.S. attorney did in this case. While reversing the MASSEY convictions the Court stated:

> "The use of a defendant's post-arrest silence to impeach an exculpatory story told for the first time at trial violates the Fourteenth Amendment's mandate of due process if the silence follows the giving of *Miranda* warnings.[1] *See Fletcher v. Weir,* ___ U. S. ___, 102 S.Ct. 1309, 71 L.Ed.2d 490 (1982); *Doyle v. Ohio,* 426 U.S. 610, 619, 96 S.Ct. 2240, 2245, 49 L.Ed.2d 91 (1976). Impeachment on the basis of a defendant's silence following warnings is "fundamentally unfair because *Miranda* warnings inform a person of his right to remain silent and assure him, at least implicitly, that his silence will not be used against him . . . . Doyle bars the use against a criminal defendant of silence maintained after receipt of governmental assurances." *Anderson v. Charles,* 447 U.S. 404, 407-08, 100 S.Ct. 2180, 2181-82, 65 L.Ed.2d 222 (1980)." 687 F. 2d at 1353.

VII.

CONCLUSION

The Petitioner, Larry Tabeling, respectfully urges that his Petition For A Writ of Certiorari be granted.

Respectfully submitted,

November 1982.

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Appendix B.....	Ordering denying rehearing dated September 27, 1982.
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Appendix D.....	Reproduction of constitutional provisions and appropriate statutory reference.

Appendix A

UNITED STATES COURT OF APPEALS

For the Seventh Circuit

Chicago, Illinois 60604

Argued April 8, 1982

July 27, 1982

Before

Hon. WALTER J. CUMMINGS, *Circuit Judge*
Hon. RICHARD A. POSNER, *Circuit Judge*
Hon. ROBERT A. GRANT, *Senior District Judge*[1]

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

Nos. 81-2006
81-2007

vs.

LARRY TABELING and
SAMUEL F. JONES,
Defendants-Appellants.

Appeal from the United States District Court for the Central District of Illinois, Danville Division.

No. 80-Cr-20041

Harold A. Baker,
Judge.

ORDER

This is an appeal by Larry Tabeling and Samuel F. Jones from their convictions on separate counts of conspiring to distribute marijuana and conspiring to distribute cocaine, in violation of 21 U. S. C. § 846. No statement of facts is necessary, as this is not a published or citable opinion and the facts are of course well known to the defendants and their counsel. As in all appeals in conspiracy cases, there is an objection to the trial judge's refusal to sever the defendants'

[1] Honorable Robert A. Grant, Senior District Judge of the Northern District of Indiana, sitting by designation.

trials, but it is frivolous, as are their objection to the refusal of the judge to give a multiple-conspiracy objection and their argument that there was insufficient evidence that what the defendants was selling really was marijuana and cocaine.

Only three issues need be discussed:

1. Tabeling claims that he was unlawfully searched and seized at the Denver airport. This contention is refuted by this court's opinion in *United States v. Black*, No. 81-1883 (7th Cir. Apr. 6, 1982), ____ F.2d ____.

2. Jones complains that there was insufficient evidence that he participated in the conspiracy to sell marijuana. The evidence showed that he and Tabeling were partners in a store called *The Plant Connection* from which marijuana was sold. It is of course possible that Jones was involved only in the legitimate side of the business, but it is highly unlikely given that bales of marijuana were stored at the shop; and there was other evidence, besides the probabilities inherent in the situation, linking Jones to the marijuana conspiracy (there was abundant evidence linking him to the cocaine conspiracy)—enough to satisfy the government's burden of proving guilt beyond a reasonable doubt.

3. The defendants complain that one Angela Blair was compelled to testify against them in violation of her right under the Fifth Amendment not to be compelled to incriminate herself. But no right of theirs was violated; only Miss Blair can complain of being forced to testify against herself.

The judgments of conviction are affirmed.

Appendix B

UNITED STATES COURT OF APPEALS

For the Seventh Circuit

Chicago, Illinois 60604

September 27, 1982

Before

Hon. WALTER J. CUMMINGS, Circuit Judge
Hon. RICHARD A. POSNER, Circuit Judge
Hon. ROBERT A. GRANT, Senior Judge*

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

Nos. 81-2006, 81-2007 *vs.*

LARRY TABELING and SAMUEL F. JONES,
Defendants-Appellants.

Appeal from the United States District Court for the Central District of Illinois, Danville Division.

No. 80-Cr-20041

Harold A. Baker, *Judge.*

ORDER

On August 9, 1982, Larry Tabeling and Samuel F. Jones filed separate petitions for rehearing with suggestion for rehearing *en banc*. All of the judges of the original panel have voted to deny the petitions, and none of the active members of the court has requested a vote on the petitions. The petitions are DENIED.

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* Of the Northern District of Indiana.

Appendix C

UNITED STATES COURT OF APPEALS

For the Seventh Circuit

Chicago, Illinois 60504

October 14, 1982

Before

Hon. RICHARD A. POSNER, *Circuit Judge*

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

No. 81-2006 *vs.*

LARRY TABELING,
Defendant-Appellant.

Appeal from the United States District Court for the Central District of Illinois, Danville Division.

No. 80-Cr-20041

Harold A. Baker, *Judge.*

The "MOTION PURSUANT TO CIRCUIT RULE 17(a)(b) WITH SUPPORTING AFFIDAVIT OF COUNSEL, TO STAY THE MANDATE IN THIS CASE PENDING CERTIORARI IN THE UNITED STATES SUPREME COURT" filed on October 1, 1982, by counsel for the appellant, Larry Tabeling, is GRANTED to the extent that the mandate of this Court is hereby STAYED to and including November 12, 1982.

Appendix D

§ 841. Prohibited acts A

Unlawful acts

(a) Except as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally—

(1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance; or

(2) to create, distribute, or dispense, or possess with intent to distribute or dispense, a counterfeit substance.

§ 2. Principals

(a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

(b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal.

(As amended Oct. 31, 1951, c. 655, § 17b, 65 Stat. 717.)

§ 846. Attempt and conspiracy

Any person who attempts or conspires to commit any offense defined in this subchapter is punishable by imprisonment or fine or both which may not exceed the maximum punishment prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

(Pub. L. 91-513, Title II, § 406, Oct. 27, 1970, 84 Stat. 1265.)

AMENDMENT [V.]

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

(Ratified December 15, 1791.)

AMENDMENT [IV.]

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

(Ratified December 15, 1791.)

Supreme Court, U.S.
FILED
JAN 12 1983
ALEXANDER L. STEVAS
CLERK

No. 82-809

In the Supreme Court of the United States

OCTOBER TERM, 1982

LARRY TABELING, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether petitioner was unlawfully seized during his encounter with DEA agents at an airport.

2. Whether the prosecution impermissibly called attention to petitioner's "silence" after he was given *Miranda* warnings.

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BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The order of the court of appeals (Pet. App. 1a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on July 27, 1982. A petition for rehearing was denied on September 27, 1982 (Pet. App. 1b). The petition for a writ of certiorari was filed on November 15, 1982. The jurisdiction of this court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following denial of petitioner's suppression motion and a jury trial in the United States District Court for the Central District of Illinois, petitioner and co-defendant Samuel F. Jones were convicted of conspiring to distribute marijuana (Count 1) and cocaine (Count 2), in violation of 21 U.S.C. 846.[1] Petitioner was sentenced to a five-year term of imprisonment on Count 1, to run concurrently with a 10-year term on Count 2. He was also fined $5,000 on each count. The court of appeals affirmed.

1. The evidence adduced at trial showed that in early 1978 petitioner and co-defendant Jones were co-owners of a tropical plant store in Champaign, Illinois, called "The Plant Connection." In addition to purveying tropical plants, petitioner also used the premises to sell large quantities of marijuana to local distributors. Steve Beck, a supplier, commonly purchased 25-30 pounds of marijuana a week, which he repackaged and sold to regular customers such as Gary Kaganowich. Kaganowich in turn distributed the marijuana to his own customers (Tr. 137-139, 140-141, 467, 471). Beck regularly took the proceeds of his drug transactions to "The Plant Connection" and gave them to an employee, Angela Blair (Tr. 161-162, 325). Blair often gave marijuana or cocaine filled packages to callers at the store, and she noticed that some of the store's clientele were not there to purchase plants (Tr. 319, 321-329, 343). Later in 1978, petitioner decided to switch his "business" from

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[1] Co-defendant Jones' petition for a writ of certiorari, No. 82-846, was denied on January 10, 1983.

marijuana to cocaine sales because cocaine is less bulky. Beck began purchasing cocaine from petitioner and reselling it to Kaganowich and other customers (Tr. 151-152, 473-474). On several occasions, Beck picked up cocaine from Jones' apartment for which he paid Jones directly (Tr. 180-183).

During the fall of 1978, Beck told petitioner and Jones that he planned to turn his "business" over to Kaganowich (Tr. 154-155). During a plant sale held by the store, Beck identified petitioner and Jones to Kaganowich as his marijuana suppliers (Tr. 472). At a later meeting attended by Beck, Kaganowich, petitioner, and Jones, Kaganowich outlined the amounts of cocaine he thought he could distribute and his planned mode of payment. Petitioner and Jones agreed to supply the requested amounts in advance of payment but promised a more favorable price for a cash transaction. Kaganowich thereafter obtained his cocaine supplies from petitioner and Jones (Tr. 477-479).

2. Prior to trial, petitioner moved to suppress $38,000 in currency that had been seized from him during an encounter with federal agents on March 21, 1978, at the Denver airport. The evidence adduced at the suppression hearing showed that on March 21, 1978, plainclothes DEA agent Ron Weaver, stationed at the Denver airport, received a call from police Sgt. Skip Pearson in Miami, Florida. Pearson related that a suspected transporter of cocaine was en route from Miami to Denver. Pearson told Weaver that he had observed the suspect purchasing a one-way ticket just 10 minutes before flight time, and that the suspect had boarded the flight without checking any luggage; moreover, the individual had boarded only at

the last minute, after walking slowly down the concourse toward the plane, reversing direction several times en route (S.H. Tr. pp. 15-17)[2] Weaver briefed his supervisor and two cooperating Denver police officers on the information he had received, then proceeded to the arrival gate. Based on Pearson's description, Weaver recognized petitioner when he deplaned. As petitioner proceeded up the concourse, he varied his walking speed, occasionally reversing direction, or stopping to look around. Agents followed petitioner into the main concourse, where he placed a phone call at a public telephone. When one agent went to the pay phone adjacent to that occupied by petitioner, petitioner hung up, moved to another phone booth, and placed another call. During the course of this second call, petitioner turned his back or put his head down each time anyone walked by (S.H. Tr. 17-20).

Upon completing his call, petitioner went to a taxi stand. Agent Weaver then approached petitioner, identified himself, and asked petitioner if he would accompany him to an airport security office about 30 yards from the taxi stand. Agent Weaver testified that this was a request, not a direction, that he had been prepared to allow petitioner to proceed on his way, and that he made clear to petitioner that no compulsion was involved. Petitioner agreed to accompany the agent and did so (S.H. Tr. 17-20, 34).

Although petitioner had not been arrested, he was administered *Miranda* warnings. The agents then asked him for identification. Petitioner responded that he did not have any identification, but tendered

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[2] "S.H. Tr." refers to the transcript of the suppression hearing.

his ticket and other documents (S.H. Tr. 20-21)[3] The agents then inquired as to the contents of his suitcase. Petitioner volunteered "You're free to look inside." When the agents opened the suitcase, they found $38,000 in currency wrapped inside petitioner's sneakers and clothing. When asked the amount of money inside the suitcase, petitioner replied, "a few thousand dollars," hesitated briefly, and then said "$38,000." Petitioner denied that the money belonged to him, but declined to reveal its owner. At this point, the agents advised petitioner that they were contacting the Internal Revenue Service concerning any interest it might have in the unexplained cash. Shortly thereafter an IRS agent arrived and interviewed petitioner. Petitioner continued to deny ownership of the money. The agents took possession of the cash and gave petitioner a receipt. Petitioner was then advised that he was free to leave with all his personal possessions (S.H. Tr. at 21-23).

After the evidentiary hearing the magistrate denied the suppression motion. The magistrate's decision was adopted by the district court (Tr. 361-362). In a brief judgment order designated as not for publication or citation, the court of appeals rejected petitioner's claim that the evidence was fruit of an unlawful search and seizure of his person, relying upon its prior opinion in *United States* v. *Black*, 675 F.2d 129 (1982), petition for cert. pending, No. 81-2239 (filed June 3, 1982).

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[3] The ticket was issued in petitioner's name. Among the documents tendered, however, was a hotel receipt issued in the name "Sam Jones." When asked who Sam Jones was, petitioner replied "That's me sometimes" (Tr. 354-355, 371).

ARGUMENT

1. Petitioner's contention (Pet. 9-13) that he was unlawfully seized during his encounter with law enforcement officials is without merit.

In its decision in *United States* v. *Black*, *supra*, invoked by the court of appeals as the basis for rejection of petitioner's contention, the court of appeals concluded that no seizure subject to the Fourth Amendment occurs when contact between law enforcement officials and an individual is consensual—i.e., in circumstances in which a reasonable person would not conclude that his or her liberty was constrained. 675 F.2d at 132-134. This standard is consistent with the applicable decisions of this Court and of the courts of appeals. This Court has recognized that not every contact between a citizen and a police officer constitutes a seizure within the meaning of the Fourth Amendment. On the contrary, "[o]nly when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen may we conclude that a 'seizure' has occurred." *Terry* v. *Ohio*, 392 U.S. 1, 19 n.16 (1968); see also *id.* at 32-33 (Harlan, J., concurring); *id.* at 34 (White, J., concurring); *Sibron* v. *New York*, 392 U.S. 40, 63 (1968). As Justice Stewart explained in his opinion in *United States* v. *Mendenhall*, 446 U.S. 544, 554-555 (1980) (footnotes omitted):

> [A] person has been 'seized' within the meaning of the Fourth Amendment only if, in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave. Examples of circumstances that might indicate a seizure, even where the person did not attempt to leave, would be the threatening presence of several officers, the dis-

> play of a weapon by an officer, some physical touching of the person of the citizen, or the use of language or tone of voice indicating that compliance with the officer's request might be compelled. * * * In the absence of some such evidence, otherwise inoffensive contact between a member of the public and the police cannot, as a matter of law, amount to a seizure of that person.[4]

Like the Seventh Circuit in *Black* and this case, the courts of appeals have uniformly adopted the standard endorsed by Justices Stewart and Rehnquist for determining whether or not a seizure has taken place.[5] Indeed, petitioner does not quarrel with that

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[4] In *Mendenhall*, a majority of the Court did not reach the question addressed in Justice Stewart's opinion. Justice Powell, with whom the Chief Justice and Justice Blackmun joined, concluded that the encounter in that case, if a seizure, was supported by reasonable suspicion. 446 U.S. at 560. These Justices, who together with Justices Stewart and Rehnquist made up the majority upholding the lawfulness of the encounter in *Mendenhall*, intimated no doubt about the standard announced by Justice Stewart, reserving judgment only as to its application to the particular set of facts presented. *Id.* at 560 n.1. Justice White, joined by Justices Brennan, Marshall, and Stevens in dissent, declined to reach the question whether Mendenhall had been seized, but the doubts he expressed pertained only to the application of the standard outlined by Justice Stewart to the facts of that particular case. *Id.* at 570 & n.3.

[5] See *United States* v. *Moore*, 675 F.2d 802, 807-808 (6th Cir. 1982), petition for cert. pending, No. 82-587 (filed Sept. 10, 1982); *United States* v. *Beale*, 674 F.2d 1327, 1329-1330 (9th Cir. 1982), petition for cert. (on a different issue) pending, No. 82-674 (filed Oct. 18, 1982); *United States* v. *Elsoffer*, 671 F.2d 1294, 1297 (11th Cir. 1982); *Gomez* v. *Turner*, 672 F.2d 134, 140-141 (D.C. Cir. 1982); *United States* v. *Berry*, 670 F.2d 583, 595 (5th Cir. 1982) (en banc); *United States* v. *West*, 651 F.2d 71, 72 (1st Cir. 1981), petition for cert. pend-

standard; rather he invokes it and relies upon it (Pet. 10, 11, 12). Accordingly, no question as to the fundamental principles that distinguish consensual police-citizen encounters from seizures is presented here.

b. The petition instead presents the fact-bound question whether the above-mentioned standard was properly applied to the facts of this case. That question does not warrant further review; in any event, the court of appeals' decision is correct.

Here, as in *Mendenhall*, 446 U.S. at 555 (opinion of Stewart, J.), petitioner's encounter with police began in a public area. Nor is there any claim or evidence that the agents wore uniforms, displayed weapons, or touched petitioner's person or otherwise exercised authority over him. On the contrary, the uncontradicted testimony of Agent Weaver was that petioner was given to understand that cooperation was at his option (S.H. Tr. 34). Under the circumstances, there is no need to consider petitioner's claims (Pet. 10-12) that the atmosphere in which he was questioned was coercive. Similarly irrelevant is petitioner's observation (Pet. 10-11) that the encounter in Denver was not a random one. The fact that police have some ground for suspecting an individual of criminal activity, which may or may not constitute "reasonable suspicion," does not thereby render an encounter with such an individual a seizure, for the objectively manifested conduct of police rather than their subjective intentions are controlling

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ing, No. 81-307 (filed Aug. 14, 1981): *United States* v. *Wylie*, 569 F.2d 62, 68 (D.C. Cir. 1977), cert. denied, 435 U.S. 944 (1978).

for this purpose. See *Scott* v. *United States*, 436 U.S. 128, 136-137 (1978).

Petitioner's reliance (Pet. 11 n.11) on *United States* v. *Elsoffer*, 671 F.2d 1294 (11th Cir. 1982), is misplaced. In *Elsoffer*, it is true, the court suggested in dictum that retention of an individual's ticket for an undue period of time during interrogation converted the encounter into a seizure.[6] Yet, as the decision of the en banc court in *United States* v. *Berry*, 670 F.2d 583, 597, 603 n.26 (5th Cir. 1982), makes clear, the Eleventh Circuit does not apply a rigid rule requiring immediate return of a ticket in every case, if the encounter is not to be deemed a seizure. The true rule applied is simply that any retention must not assume a form or duration that conveys the reasonable belief that the individual is no longer free to leave. For all that appears here, what was retained was the used stub from the Miami-Denver flight; obviously, whatever inference might be drawn regarding retention of a ticket needed for onward passage has little application in this context. In any event, where, as here, an individual is told at the outset that cooperation is voluntary, any inference of detention that might be drawn from the officer's retention of a ticket during questioning of an individual in other circumstances has no application.[7]

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[6] The *Elsoffer* court actually held that reasonable suspicion had, in any event, arisen by the time of the "seizure."

[7] Petitioner has adduced no record support for his statement (Pet. 5) that his ticket was retained at the end of the encounter. Assuming that the statement is accurate, such retention is of no moment. At that point petitioner was expressly told, once again, that he was free to leave. No independent issue is raised in this Court as to the retention of the ticket, or the $38,000 in cash.

c. Petitioner's reliance (Pet. 11) upon *Brown* v. *Texas*, 443 U.S. 47 (1979), is misplaced. As the excerpt quoted by petitioner (Pet. 11) plainly reflects, the Court did not there address consensual police-citizen encounters. Petitioner's reliance upon *Reid* v. *Georgia*, 448 U.S. 438 (1980), is similarly unavailing. There, the Court did not consider whether the encounter was a seizure vel non, leaving this issue open upon remand. *Id.* at 44 n.*; *id.* at 442-443 (Powell, J., concurring). On remand the state court concluded that no seizure had transpired, *State* v. *Reid*, 276 S.E.2d 617, 621-622 (Ga.), and this Court denied review, 454 U.S. 883 (1981).[8]

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[8] The other court of appeals decisions cited by petitioner also do not conflict with the decision in this case. As the Sixth Circuit has made clear in subsequent cases, the finding of a seizure in *United States* v. *Jefferson*, 650 F.2d 854 (6th Cir. 1981), was based upon the agent's direction at the outset of the encounter that the defendant accompany him to another location. See *United States* v. *Moore*, *supra*, 675 F.2d at 807-808; *United States* v. *Tolbert*, No. 81-1485 (6th Cir. Nov. 11, 1982). The decision in *United States* v. *Patino*, 649 F.2d 724 (9th Cir. 1981), is distinguishable, for the court there relied upon the "clearly erroneous" standard of review, and upon the fact that the defendant, because of her limited command of English, might not have appreciated that she was free to leave. 649 F.2d at 727, 728-729 and n.4. Finally, *United States* v. *Place*, 660 F.2d 44 (2d Cir. 1981), cert. granted, No. 81-1617 (June 7, 1982), does not address the question whether an individual's encounter with law enforcement officers was a seizure. Instead the issue there was whether detention of luggage violated Fourth Amendment requirements.

Petitioner has noted the pendency of *Florida* v. *Royer*, cert. granted, No. 80-2146 (Nov. 30, 1981). We do not believe it necessary to hold the petition here for future disposition in light of that case. The only question necessarily presented in *Royer* is whether the police-citizen encounter there

2. Petitioner also contends (Pet. 7, 13-15) that the government impermissibly elicited trial testimony reflecting a decision on his part to exercise his Fifth Amendment right to remain silent, and that the prosecutor improperly commented upon that decision in his closing argument. This contention is factually unfounded and legally unsound.[9]

During the direct examination of Agent Weaver, the government elicited his account of petitioner's denial of ownership of the $38,000 he was carrying. See page 5, *supra*. Agent Weaver also testified that petitioner had declined to identify the owner of the cash (Tr. 357-358). But no evidence was adduced (nor is any claim now made) that petitioner invoked his Fifth Amendment rights, or that he wished to remain silent or to cease responding to further questions. The jury learned only the bare fact that petitioner had denied ownership of the currency, but had not otherwise identified the owner of the currency at

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escalated into an arrest requiring probable cause. However, the question whether an initial police-citizen encounter was itself a seizure for Fourth Amendment purposes was also briefed and argued in *Royer*. We note that the Court has recently denied certiorari in *Setzer* v. *United States*, No. 82-5409 (Nov. 29, 1982), which presented the seizure vel non issue. The Court appears, however, to be holding several other cases presenting that issue for future disposition. See *West* v. *United States*, No. 81-307 (filed Aug. 14, 1981); *Williams* v. *United States*, No. 81-1278 (filed June 3, 1982). This case differs from those that are currently pending in that petitioner was expressly informed at the outset of his encounter with police that his cooperation was voluntary.

[9] The court of appeals' judgment order indicates that this claim was deemed unworthy of discussion (Pet. App. 2a).

the initial encounter. In testifying on his own behalf at trial, petitioner stated that he had flown to Denver, en route to California, with $38,000 in cash he had intended to use to purchase plants for a forthcoming liquidation sale at "The Plant Connection." He admitted on the stand his denial to Agent Weaver that the money was his, asserting that it belonged to "The Plant Connection" (Tr. 649, 662-663).

The prosecutor's rebuttal argument properly focused exclusively upon the inconsistency between petitioner's denial of ownership to Agent Weaver and his trial testimony. The prosecutor observed (Tr. 828) that petitioner's claim that the money was his

> was so late coming, ladies and gentlemen, that it can't be anything but a complete fabrication.

This case is accordingly controlled by *Anderson* v. *Charles*, 447 U.S. 404, 408-409 (1980), which distinguishes *Doyle* v. *Ohio*, 426 U.S. 610 (1976), upon which petitioner relies. The prosecutor's comment here, like the testimony elicited from Agent Weaver, was "not designed to draw meaning from silence, but to [highlight] a prior inconsistent statement." 447 U.S. at 409. As in *Anderson* v. *Charles*, *supra*, the matter objected to by petitioner, "taken as a whole" (*id.* at 408), cannot fairly be regarded as a comment upon petitioner's exercise of his right to remain silent.[10]

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[10] Because only prior silence rather than a prior inconsistent statement was involved, *United States* v. *Massey*, 687 F.2d 1348, 1351-1353 (10th Cir. 1982), cited by petitioner (Pet. 14-15), is inapposite. *United States* v. *Prescott*, 581 F.2d 1343, 1350 (9th Cir. 1978), holding that an individual's refusal to waive Fourth Amendment rights may not be adduced as evidence of guilt, plainly has no bearing on this case.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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JANUARY 1983

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